IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 29TH SEPTEMBER 2006 / 7TH ASWINA 1928

CRL.A.No. 706 of 2001

ST.2208/1998 of MUNSIFF MAGISTRATE COURT, ERATTUPETTA

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APPELLANT:

P.A. MATHEW, S/O ABRAHAM,
PAIMPATTIL HOUSE,
THALANADU P.O.
KOTTAYAM DISTRICT.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL

RESPONDENTS:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

K.V.GOPINATH,
S/O VELAYUDHAN,
KALLUVETTATHU VEEDU,
THALANADU P.O.

BY ADV. SRI.P.C.HARIDAS
PUBLIC PROSECUTOR K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

CRL.A. 706/2001

DATED THIS THE 29TH DAY OF SEPTEMBER, 2006

JUDGMENT

The complainant, in S.T.No.2208/1998 on the file of the Munsiff Magistrate Court, Erattupetta, is the appellant. He preferred the complaint, under Section 138 of the Negotiable Instruments Act, in short 'the Act'. The parties were directed to adduce evidence. Accordingly, the complainant was examined as PW1 and he marked five documents. Four witnesses were examined and one document was marked by the accused, the second respondent. The learned Magistrate, after appreciating the evidence, acquitted the accused and therefore, the complainant is before this Court, challenging the same.

2. When the appeal came up for consideration, I heard in detail the arguments advanced by Advocate Shaji Thomas Porkkattil, for the appellant, and Advocate P.C.Haridas, for the second respondent, the accused. The appellant had relied on the evidence particularly that of

DW1, the accused, DW2, the scribe, DW3 the mediator as well as DW4 the father of the complainant.

3. The crux of the matter is that an agreement was entered into between DW4 and the accused, regarding the sale of a property of the accused to DW4. It is alleged that an amount of Rs.1,00,000/- was paid by DW4 to DW1. However, the agreement was not brought into effect. Therefore, the same did not take place. When the amount was demanded, a blank cheque was handed over, submits the counsel for the accused, to DW4. However, because of the intervention by the police and the mediators, it was decided that DW4 would waive Rs.15,000/-, and the balance amount of Rs.85,000/- has to be paid. This had been put into writing, as could be seen from Ext.D1 dated 18.2.1998. The details of the cheque, as No.22109 of Service Co-operative Bank, Thalanadu, are also mentioned in it. The contention of the accused is that Ext.P1 cheque is the very same cheque and it was issued as a security at the time of execution of Ext.D1 document.

4. When Ext.D1 was put to DW4, he had denied the execution of the same. The signature therein was also doubted by him. The learned Magistrate had compared the signature in Ext.D1 with that of the signatures of DW4, affixed by him in his depositions, available in the Court and came into a conclusion that Ext.D1 was actually executed by DW4. The Court also accepted the evidence of Dws 1 and 2.

5. However, the original agreement that had been executed between Dws 1 and 4 was not produced before the Court below. The accused, DW1, who was in possession of Ext.D1, must be in possession of the agreement as well. The counsel for the appellant challenges the execution of Ext.D1 itself. The counsel calls the same as concocted document. It is of course, written on a plane paper.

6. The counsel also submits that if Ext.D1 was in the possession of DW1, he should have given a reply to Ext.P3 notice dated 2.9.1998. The counsel therefore, submits that the learned Magistrate went wrong in

accepting Ext.D1 and rejecting the oral evidence of DW4, thereby taking a view in favour of the accused, the second respondent.

7. I had also heard the interpretation of the evidence, available on record, by the counsel for the second respondent, the accused. After going through the entire materials, I am of the view that an opportunity be given to the parties, so that both sides could adduce additional evidence. If such an evidence is so adduced, the learned Magistrate may re-appreciate the entire facts, evidence and law, so that the Court could come to a definite conclusion, on all the contentions that are raised, by both sides.

8. Therefore, without expressing any opinion on the merit of the matter, I set aside the impugned judgment dated 24.4.2001, in S.T.No.2208/1998 and remand the case to the file of the Munsiff Magistrate Court, Erattupetta.

9. The learned Magistrate shall re-appreciate the entire matter, including the additional evidence, if any,

that may be adduced by both sides and enter into a finding, according to the law and facts, untrammelled by the discussions herein. The disposal of the case shall be at the earliest, in any case, within two months from the date of appearance of the parties.

10. The parties shall appear before the Court below, on 16.10.2006.

11. Return the records to the lower Court, immediately.

The appeal is disposed of as above.

J.M.JAMES
JUDGE

mrcs